

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-6439**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES B. TERRY, a/k/a Johnny Terry,

Defendant - Appellant.

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On Petition for Rehearing with Suggestion for Rehearing in Banc.  
(CR-92-216, CA-96-1216-6-20)

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Submitted: October 7, 1997

Decided: October 29, 1997

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Before WILKINS and MICHAEL, Circuit Judges, and BUTZNER, Senior  
Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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James B. Terry, Appellant Pro Se. Matthew Raymond Hawley, Jr.,  
Assistant United States Attorney, Greenville, South Carolina, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

James B. Terry pled guilty to money laundering, 18 U.S.C. § 1956(a)(1)(A)(i) (1994), conspiracy to distribute narcotics, 21 U.S.C. § 846 (1994), and using and carrying a firearm during and in relation to a drug trafficking crime, 18 U.S.C.A. § 924(c) (West Supp. 1997). Terry filed a motion under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997) challenging his § 924(c) conviction under Bailey v. United States, \_\_\_ U.S. \_\_\_, 116 S.Ct. 501 (U.S. Dec. 6, 1995) (Nos. 94-7448, 94-7492). The district court granted relief and resentenced Terry, adding an enhancement for possession of a firearm during a drug offense. U.S. Sentencing Guidelines Manual, § 2D1.1(b)(1) (1995). Terry appeals, claiming that the lower burden of proof applicable at sentencing violated his right to due process.

This court has held that the preponderance of evidence standard of proof at sentencing does not violate due process. See United States v. Engleman, 916 F.2d 182 (4th Cir. 1990); see also United States v. Bowman, 926 F.2d 380, 381-82 (4th Cir. 1991) (holding that application of § 2D1.1 does not violate Due Process Clause). Because the evidence presented by the government established that Terry possessed fourteen firearms at the time of his arrest on drug trafficking charges, the district court's application of § 2D1.1 was not clearly erroneous. See United States v. Rusher, 966 F.2d 868, 880 (4th Cir. 1992).

Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED